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December 10, 1999

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Mr. Shawn T. Canavan
Railroad Realty Services, Inc.
700 North Second Street, 5th Floor
St. Louis, MO 63102

**Re: Access Agreement for stormwater and drainage improvements at intersection of
Terminal Railroad and Dead Creek**

Dear Shawn:

I am in receipt of your letter of December 9, 1999, transmitting Terminal Railroad's ("the Railroad") proposed "Right of Entry License Agreement" ("Agreement") between the Railroad and Solutia Inc. ("Solutia"). As you know, Solutia is requesting access to the Railroad's property at the intersection of Terminal Railroad and Dead Creek in St. Clair County, Illinois, in order to make certain stormwater and drainage improvements, including the removal and replacement of the existing culverts, at the intersection of the Railroad and Dead Creek. These stormwater and drainage improvements are required pursuant to a Unilateral Administrative Order ("UAO") issued to Solutia by the U.S. Environmental Protection Agency.

Due to the circumstances under which access is required, and given the nature of the work to be performed by Solutia, Solutia cannot agree to the Railroad's proposed Agreement. Although Solutia is willing to negotiate with the Railroad regarding the terms of the requested access, Solutia cannot agree to the following terms:

- 1) Solutia cannot agree to a license fee of \$3,000 (¶2);
- 2) Solutia cannot agree to pay expenses incurred by the Railroad in supervising or inspecting the work (¶7);
- 3) Solutia cannot agree to the extensive notice provisions outlined in Paragraph 8 of the Agreement, nor can Solutia agree to pay for flagmen or other protective or safety measures that are performed by the Railroad (¶8);
- 4) Because Solutia is performing this work in accordance with U.S. EPA's oversight, Solutia cannot agree to terms giving the Railroad the ability to approve or disapprove specifications or plans, or to supervise its work (¶9(b), (d));

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- 5) Solutia cannot agree to Paragraph 10 of the Agreement. This paragraph states that "Licensee's Work shall be performed so as not to obstruct or interfere with any underground or above ground water pipes, gas mains, sewers, fiber optic cables, wires, signal, communication lines, and other installations. . . ." The very nature of the work to be performed -- repair and replacement of the existing culverts -- necessitates an interference with underground pipes and sewers. Additionally, Solutia is not agreeable to giving the Railroad discretion to take action to eliminate what it considers an "interference," "obstruction," or "harmful or undesirable effect" (§10).
- 6) Solutia cannot agree to the broad "Indemnity" provision proposed in Paragraph 14. Solutia will only agree to an indemnity provision resembling the one proposed in Paragraph 5 of Solutia's original Access Agreement (attached).
- 7) Solutia cannot agree to Paragraph 15 governing insurance coverage. However, Solutia is agreeable to listing the Railroad as an additional insured on its contractor's Certificate of Insurance, and to providing the Railroad with a copy of such certificate.
- 8) Solutia cannot agree to Paragraph 16 of the Agreement, giving the Railroad "sole discretion" to terminate the License "for any reason whatsoever or no reason at all" (§16).
- 9) Solutia cannot agree to Paragraph 18 of the Agreement addressing "Disclosure of Materials." Solutia will only agree to release *final* versions of documents that discuss the Railroad's property, and Solutia cannot agree to the ten-day timeframe. Additionally, Solutia cannot agree to the confidentiality provisions contained in Paragraph 18. The nature of this work requires that Solutia coordinate with U.S. EPA and the State of Illinois in the performance of this work.
- 10) Solutia will not agree to pay the Railroad's attorney's fees if there is an action to enforce or interpret the Agreement (§19(c)).
- 11) Paragraph 19(j) must be amended to include U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives ("Government Personnel").

The list above delineates the major provisions of the Railroad's proposed Agreement that are unacceptable to Solutia. I am again forwarding to you Solutia's original proposed Access Agreement for your consideration.

I will be contacting you in the next few days regarding amending your proposed Agreement. If we are unable to reach an agreement in the next few days, Solutia will turn this issue over to U.S. EPA.

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Thank you for your time and consideration to this matter.

Very truly yours,

Thompson Coburn LLP

By 
Colleen E. Michuda

CEM/gao

Enclosure

cc: Joseph G. Nassif

✓Kevin Turner

D. Michael Light

Thomas Martin

ACCESS AGREEMENT

This Agreement is made as of the _____ day of _____, 1999 between the Terminal Railroad Association ("Terminal Railroad"), a land owner in St. Clair County, Illinois, and Solutia Inc. ("Solutia"), whose principal offices are located at 575 Maryville Centre Drive., St. Louis, Missouri 63141.

WHEREAS, Solutia has requested permission to enter upon the property of the above-listed owner at the address listed below to perform certain stormwater and drainage improvements.

WHEREAS, the Terminal Railroad is willing to grant Solutia a revocable license for the purpose aforesaid.

NOW, THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the parties agree as follows:

1. The Terminal Railroad grants to Solutia a revocable license to enter upon real property owned by the Terminal Railroad, located at the intersection of the Terminal Railroad and Dead Creek in Cahokia, Illinois ("the Property"), for the purpose of performing certain stormwater and drainage improvements ("the Work") along Dead Creek. The Work may also include the temporary storage of equipment and materials incident to the performance of such stormwater and drainage improvements.

2. Said access shall be limited to those officers, employees, and contractors of Solutia ("Solutia Personnel"), as designated by Solutia whose presence is necessary to further the purposes of this Agreement. Such access shall also be granted to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives ("Government Personnel") for the purpose of monitoring the Work being performed by Solutia Personnel.

3. Solutia shall coordinate performance of the Work with the Terminal Railroad so as to minimize the disruption to activities on the Property.

4. Solutia agrees that upon completion of the Work, all material and equipment shall be removed from the Property. Solutia will use all reasonable efforts to ensure that the Work permitted by this Agreement is performed in a manner consistent with prevailing professional standards for all areas of activities undertaken by Solutia Personnel.

5. As to the Work to be done, or services to be performed by Solutia or its consultants, Solutia assumes responsibility for any liability for losses, expenses, damages, demands and claims in connection with or arising out of any injury or damage to property, sustained in connection with or to have arisen out of the actual performance of the Work hereunder. Solutia shall indemnify, defend and save harmless the land owner of the above-described Property from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney's fees and experts' fees) directly resulting from any liability described in the preceding sentence. This indemnity does not cover any preexisting conditions on the Property, except to the extent that such condition is altered through the negligent conduct or action of Solutia and/or its contractor while working on the above-described Property and thereby results in damage to the Property that would not have otherwise occurred.

6. The Terminal Railroad shall advise Solutia of any utility lines, pipelines, or other hazardous or potentially hazardous conditions of which the Terminal Railroad has actual knowledge that might reasonably be expected to be damaged by the Work to be performed hereunder or that might significantly interfere with the performance of the Work provided herein.

IN WITNESS WHEREOF, the parties have caused this Access Agreement to be executed the day and year first above written.

BY: _____
NAME: _____
ADDRESS: _____

SOLUTIA INC.

BY: _____
TITLE: _____